

DEPARTMENT OF FINANCE AND ADMINISTRATION - Policy 16

Policy 16 - Employee Housing and Meals

Basis for Authority and General Rules

Purpose

1. The primary purpose of this Policy Statement 16 is to establish guidelines to ensure compliance with state and federal laws governing all housing and meals provided to all officials and employees, specifically Internal Revenue Code requirements, and to provide a uniform policy addressing all state owned housing. The criteria set forth in this Statement serve as guidance for the development of plans and procedures by state departments and agencies.

Applicable State Law

2. The Commissioner of the Department of Finance and Administration in consultation with the Commissioner of the Department of Personnel, the Comptroller of the Treasury, and the Attorney General is empowered to develop a policy regarding maintenance applicable to officers and employees of the State. TCA 8-23-201 (b) states, "State officers and employees subject to appointment by the department of personnel shall be provided Maintenance including, but not limited to, housing and meals, only under policies prepared by the commissioner of finance and administration in consultation with the commissioner of personnel, the comptroller of the treasury, and the attorney general." This policy is applicable only to those employees subject to appointment by the Department of Personnel and does not include employees of any higher education institution in the State.

Applicable Federal Law

3. In accordance with the 1986 Internal Revenue Code, Title 26, Subtitle A, Chapter 1B, Part III, Section 119(a), meals and lodging provided for the convenience of the employer shall be excluded from gross income provided that the following criteria are met: (1) in the case of meals, the meals are furnished on the Business Premises of the employer, or (2) in the case of lodging, the employee or official is required to accept such lodging on the Business Premises of the employer as a Condition of Employment (Criteria).

General Policies

4. All agencies and departments of the State that provide maintenance for State officials or employees shall submit a plan and develop procedures for the provision of employee maintenance in accordance with the Criteria established in this Statement. Departmental Housing Plans shall include employee name, social security number, location of housing, square footage of the dwelling, calculated monthly rent amount, justification for housing

assignment, and if applicable, approved Employee Housing Disclosure Forms (see Attachment A). All employee housing assignments detailed in the Departmental Housing Plan shall be submitted to the Commissioner of Finance and Administration for review and approval. This policy statement shall be applicable to all State officials and employees who receive housing and meals as defined in this Statement. The establishment and implementation of maintenance procedures developed in accordance with this Statement will ensure the State's compliance with applicable federal and state law. This policy includes all single and multiple dwellings, dormitory, and on-campus housing.

Effective Date and Applicability

5. This Policy Statement 16 shall become effective 60 days from issuance and shall be applied to all State officials and employees as defined in paragraph 2 receiving housing and/or meals from any state agency, department, or institution. Departmental housing plans and procedures shall be on file with the Department of Finance and Administration within 60 days from the issuance of this Policy Statement 16.

Definitions and Policies

6. Definitions - The following definitions shall apply to this Policy Statement 16:

- a. Maintenance - Actual housing or housing allowance payment and/or meals provided to an employee of the State.
- b. Essential Employee - A full-time state employee who is required as a condition of employment to live in state-owned housing located at the employee's official work station for the convenience of the appointing authority.
- c. Housing Allowance - A monthly pay supplement provided to essential employees when state-owned housing is not available on the business premises.
- d. Non-Essential Employee - A full-time state employee who is not required as a condition of employment to live in state-owned housing located at the employee's official work station for the convenience of the appointing authority.
- e. Excess Housing - State owned housing that is not occupied by state personnel as a requirement of employment. This housing may be occupied by non essential state personnel and is subject to rental payments by the employee to the State.
- f. Business Premises - The location at which the employee performs his/her job duties. This must be the same site as the applicable institution, hospital, facility, etc.

- g. Condition of Employment - The employee is required to live in state-owned housing to perform functions that are elemental to his/her employment position.

Policies Regarding Rents and Housing

7. All employees meeting Criteria # 2 established in paragraph 3 will be required to complete Attachment A - Employee Housing Disclosure form and the employee shall not be charged rent. A copy of the completed disclosure form shall be filed with the Department of Personnel with the original retained by the fiscal office of the department or agency maintaining the state-owned housing. The original disclosure form shall be available for review and audit. If the employee does not meet Criteria #2 established in paragraph 3, rent shall be charged by the appointing authority to the employee. Rent shall be charged to all non-essential employees regardless of job classification provided that no state official or employee whose compensation is either established by state law or by the governor in accordance with state law shall be eligible for Maintenance or Excess Housing. The employees identified in the preceding sentence, who are living in state housing as of the policy effective date, shall be allowed to continue living in state housing as long as they serve in that employment position and shall pay rent accordingly. Employees living in Excess Housing shall also be charged rents in accordance with this policy.

8. Regardless of whether rents are paid, all employees living in state-owned housing shall read and sign Attachment B - Lease Agreement.

9. Any dormitory or on-campus housing provided to Essential Employees shall not be subject to rental charges. Charges to recover the cost of utilities and telephone associated with said housing shall be based on an estimate of actual cost where actual cost cannot be determined due to lack of separate metering. The estimate shall be determined by the appointing department or agency and shall be approved by the Department of Finance and Administration. Rates shall be consistently computed for all employees housed in any particular dormitory or on-campus location.

10. The standard rental rate of \$0.15 per square foot per month for property owned by the State shall be charged to the employee. Adjustments to increase or decrease the standard rental rate shall be justified by the agency or department based on the condition, location, and age of the dwelling and shall be approved by the Department of Finance and Administration. Rents charged shall be computed based on the square footage of finished living space of the dwelling. In no event shall the rent charged to an employee exceed 25% of the employee's gross monthly salary.

11. All monies collected for rental of State owned housing shall be deposited into the General Fund, unless prohibited by federal law, rule or regulation.

12. Utilities and telephones shall be metered separately to the employee where possible. Any exception to this provision should be supported in writing by the department or agency and shall be submitted to the Department of Finance and Administration for approval.

Policies Regarding Housing Allowances

13. To be eligible for a Housing Allowance, the employee must have job responsibilities that vary from his/her regular work schedule and by necessity must live in close proximity of the state agency, department, or institution. Amounts paid to the employee are included as compensation and are taxed in accordance with applicable federal guidelines.

14. All Housing Allowances shall be determined by the appointing authority and shall be subject to the approval of the Department of Personnel. Under no circumstances shall an employee receive a Housing Allowance while living in state-owned housing. Should an employee receiving a Housing Allowance refuse available housing, the housing supplements shall immediately terminate.

Policies Regarding Meals

15. Meals meeting Criteria #1, paragraph 3 shall be provided without charge to the employee and shall not be included as compensation in the following circumstances:

- a. Employees of State agencies, departments, or institutions who are required to remain on the premises during work hours in order to provide security of inmates and/or residents;
- b. Other employees of State institutions or facilities when it is determined by the appointing authority that situations exist that render it either impractical, unsafe, or imprudent for meal breaks to be taken away from the facility grounds.

This policy intends that only one meal be provided during any normal shift.

Agency Responsibility

16. Departmental plans and procedures and subsequent revisions shall be submitted to the Commissioner of the Department of Finance and Administration for approval. Upon approval, copies shall be filed with the Comptroller of the Treasury, Division of State Audit.

Exceptions

17. Exception requests to this policy shall be submitted to the Commissioner, Department of Finance and Administration for approval, in consultation with the Comptroller of the Treasury, the Commissioner of the Department of Personnel and the Attorney General.

Approved exceptions shall be filed with the Division of State Audit, Comptroller of the Treasury.

Approvals

Approval of the Commissioner of Finance and Administration - I, John D. Ferguson, hereby approve this Policy Statement 16 of the Department of Finance and Administration and as such agree with and authorize the actions necessary to implement its requirements.

Signed: _____ Date: _____
John D. Ferguson, Commissioner
Department of Finance and Administration

This Policy Statement 16 of the Department of Finance and Administration was developed in consultation with the following:

Comptroller of the Treasury - I, William R. Snodgrass, hereby acknowledge that this Policy Statement 16 of the Department of Finance and Administration was developed in consultation with my office.

Signed: _____ Date: _____
William R. Snodgrass, Comptroller
Office of the Comptroller of the Treasury

Commissioner of the Department of Personnel - I, Eleanor E. Yoakum, hereby acknowledge that this Policy Statement 16 of the Department of Finance and Administration was developed in consultation with my office.

Signed: _____ Date: _____
Eleanor E. Yoakum, Commissioner
Department of Personnel

Attorney General - I, Knox Walkup, hereby acknowledge that this Policy Statement 16 of the Department of Finance and Administration was developed in consultation with my office.

Signed: _____ Date: _____
Knox Walkup, Attorney General
Office of the State Attorney General and Reporter

ATTACHMENT A - EMPLOYEE HOUSING DISCLOSURE

I, _____, hereby certify that I occupy State-owned
(name of employee)
housing located on State property at _____ and that I do so
(address of property)
as a condition of my employment and for the convenience of _____.
(Department/Agency)

I further understand that should any conditions of my employment change that I may be responsible for rental charges associated with said property or any associated federal tax liability.

Signature of Employee

Date

Signature of Departmental Commissioner

Date

ATTACHMENT B - STANDARD RENTAL AGREEMENT

This agreement made this, the _____ day of _____, 19 ____ by and between the _____, hereinafter called the Lessor and _____, hereinafter called the Lessee.

WITNESSETH that the said Lessor has let and demised unto the Lessee the residence designated as _____, at _____.

The above lease is subject to and made upon the following express covenants, terms, and conditions:

1. The said Lessee hereby agrees to occupy the demised premises only as a personal dwelling and not to sub-let or sub-rent the same or any part thereof to another party. Rents, where applicable, will be due and payable on the first day of each month for that month. Employees remitting rents will do so through payroll deduction by completing an approved payroll deduction authorization form.
2. The said Lessee hereby agrees not to allow the property to be used for any purpose which would permit any waste to the premises, for any purpose contrary to any laws, or in a manner which would subject the State to any undue liability for injury to the Lessee or his/her invitees.
3. The said Lessee hereby agrees to hold the State harmless against all damages, accidents, and injuries to persons or property caused by or resulting from or in connection with Lessee's occupying the premises. Lessee assumes full responsibility for the action, care, and protection of any of Lessee's invitees and/or guests, while same are on the premises and/or making use of any complex common area. Acceptance of possession of the premises by Lessee conclusively establishes that the premises are delivered in a safe and habitable condition. The State makes no warranties whatsoever either express or implied regarding the condition of the leased premises and the Lessee accepts the leased premises "as is."
4. The said Lessee hereby agrees to assume responsibility for maintaining insurance on all personal property belonging to Lessee located in the dwelling, adjacent to the dwelling, or on the lot associated with the dwelling and shall hold the State harmless for any loss thereof.
5. The said Lessor, its employees or agents, may enter the premises under the following circumstances:
 - a. by announcing their intention to inspect the premises 24 hours in advance

- b. when there is an immediate threat to the property or its occupants;
- c. in the event the occupant refuses to surrender the premises after due notice to vacate.

6. The Lessee hereby agrees not to build any structure, make any improvements, or make any alterations to the premises without the written consent of the Lessor. Furniture and/or fixtures, where applicable, shall be maintained in as good condition as in at the time of the execution of this lease, ordinary wear and tear excepted.

7. The Lessor hereby agrees that maintenance to the premises shall be performed according to the following conditions:

- a. Lessor will provide such equipment, materials, and labor as are necessary to keep the premises in a habitable condition;
- b. Lessor will provide labor and materials, subject to budget funding, for the periodic major maintenance of the premises and replacement of any major appliances supplied by the Lessor determined to be necessary;
- c. Lessor will provide insect and/or rodent extermination service as determined necessary;
- d. Lessee will provide labor, materials, and cleaning supplies for routine daily maintenance and cleaning and will maintain the grounds immediately surrounding the residence in a neat and attractive condition;
- e. Lessee will provide pet facilities that are of such type, construction, sanitation, and location as to conform to and be compatible with area surroundings and appearance after receiving permission from the supervisor to keep such pets.

8. If the Lessee should at any time be discharged from state employment or does resign or voluntarily cease employment with the State, the Lessee violates any term or condition of this agreement, or if the Lessor desires possession of the premises in order to properly and reasonably carry on its business, the Lessor shall have the right to terminate this agreement and reenter and take possession of the premises, upon thirty (30) days written notice to the Lessee to vacate the premises. It is further agreed that, should the Lessee fail to vacate the premises in accordance with said written notice, the Lessee will pay the Lessor, as rent, a sum equal to the predetermined rental rate for the premises for the time thereafter that the Lessor is kept out of possession of the premises. Said rent shall be remitted through payroll deduction from the employee's earnings.

9. This agreement shall be valid and binding on the parties so long as the Lessee is employed with _____ or until the agreement is terminated pursuant to paragraph eight above. Upon the termination or expiration of this agreement, the Lessee shall, within thirty (30) days thereafter, peaceably yield up and

deliver to the Lessor the above described premises in as good condition as in at the time of the execution of this agreement, ordinary wear and tear excepted.

10. If the Lessee, during the terms of the agreements, believes that the Lessor is in breach of this agreement, the grievance procedure for regular employees as found in Tennessee Code Annotated, Section 8-30-328(a) and the Rules of the Department of Personnel, Chapter 1120-7-1, shall be used to remedy such breach.

11. The Lessee agrees that he/she has read the above agreement, understands all the terms and conditions included herein, and agrees to be bound by said terms and conditions.

WITNESS, WHEREOF, the parties have executed this agreement on the date as first above written.

EMPLOYEE: (LESSEE)

Employee's Signature

Date

Classification

_____ : LESSOR
Department, Agency or Institution Name

Commissioner

Date